

OCT 20 2009

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDREA SPIEGLER, on Behalf of  
Herself and All Others Similarly Situated;  
PNINA BOUSKILA, on Behalf of Herself  
and All Others Similarly Situated,

Plaintiffs - Appellants,

v.

HOME DEPOT USA, INC; THE HOME  
DEPOT, INC; EXPO DESIGN CENTER;  
U.S. REMODELERS, INC; U.S. HOME  
SYSTEMS, INC,

Defendants - Appellees.

No. 08-55782

D.C. No. 2:07-cv-04428-CAS-  
AJW

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Christina A. Snyder, District Judge, Presiding

Argued and Submitted October 7, 2009  
Pasadena, California

Before: KLEINFELD and TALLMAN, Circuit Judges, and TRAGER,<sup>\*\*</sup> District  
Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> The Honorable David G. Trager, Senior United States District Judge  
for the Eastern District of New York, sitting by designation.

Andrea Spiegler and Pnina Bouskila represent a putative class (collectively “Appellants”) of home improvement store patrons who allege they were overcharged for cabinet refacing work completed in their homes. Appellants brought this action against Home Depot U.S.A., Inc.; The Home Depot, Inc.; Expo Design Center; and Does 1–100 (collectively “Home Depot”). The district court granted Home Depot’s Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Appellants’ Second Amended Complaint set forth five causes of action alleging violations of California’s Unfair Competition Law and Consumers Legal Remedies Act, breaches of contract terms and implied warranties, and seeking contract reformation. The district court correctly found the contracts between Appellants and Home Depot to be fixed-price contracts and therefore did not imply a quantity term into the contracts. Pursuant to this interpretation, Appellants failed to state a claim upon which relief can be granted. The district court’s disposition in this case, *Spiegler v. Home Depot U.S.A., Inc.*, 552 F. Supp. 2d 1036 (C.D. Cal. 2008), is well-reasoned and we affirm for the reasons stated within it. We agree that Appellants’ Second Amended Complaint does not plead facts sufficient to state a claim upon which relief can be granted.

**AFFIRMED.**